

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

STACEY SEAMSTER,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-979-D
)	
ROBERT PATTON, Director,)	
DEPARTMENT OF CORRECTIONS,)	
)	
Defendant.)	

ORDER

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Upon initial screening of the Civil Rights Complaint, Judge Erwin recommends dismissal of the action pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b) for failure to state a claim on which relief can be granted. Judge Erwin finds that Plaintiff's claim is not cognizable under 42 U.S.C. § 1983 but must be brought in an action for habeas corpus relief under 28 U.S.C. § 2241. Judge Erwin further finds that Plaintiff's application to proceed *in forma pauperis* under 28 U.S.C. § 1915 should be denied.

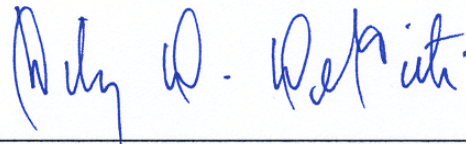
Plaintiff has not filed a timely written objection or requested additional time to object. Instead, within the time period for an objection, Plaintiff commenced a habeas action by filing a petition under § 2241. *See Seamster v. Wilkerson*, Case No. CIV-15-1164-D, Petition (W.D. Okla. Oct. 15, 2005). Upon consideration, the Court finds that Plaintiff has waived further review of the issues addressed in the Report. *See United States v. 2121 East 30th*

Street, 73 F.3d 1057, 1060 (10th Cir. 1996); *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). Further, the Court fully concurs in Judge Erwin's analysis. The Court finds that the Complaint fails to state a claim on which relief can be granted under 42 U.S.C. § 1983 and that the action should be dismissed without prejudice to pursuit of a habeas action under 28 U.S.C. § 2241. The Court further finds that Plaintiff should be denied leave to proceed *in forma pauperis*.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 5] is ADOPTED, as set forth herein. Plaintiff's action under 42 U.S.C. § 1983 is dismissed without prejudice pursuant to 28 U.S.C. § 1915A(b)(1). A separate judgment shall be entered accordingly.

IT IS FURTHER ORDERED that Plaintiff's Application for Leave to Proceed In Forma Pauperis [Doc. No. 2] is DENIED.

IT IS SO ORDERED this 22nd day of October, 2015.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE